

**Charter of the County of Kaua'i
and
Kaua'i County Code**

Petition and Election Related Sections

Compiled by:
Elections Division
Office of the County Clerk
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DISCLAIMER

This document is for reference purposes only and is not the authority on the petition and/or election process for the County of Kaua'i. Consult Hawai'i Revised Statutes, Hawai'i Administrative Rules, and other sources for additional information and requirements.

CHARTER OF THE COUNTY OF KAUA'I

ARTICLE I THE COUNTY AND ITS GOVERNMENT

Section 1.01. Incorporation. The people of the county of Kaua'i are and shall continue to be a body politic and corporate in perpetuity under the name of "county of Kaua'i," referred to hereinafter as the "county."

Section 1.02. Geographical Limits. The islands of Kaua'i and Ni'ihau and all other islands lying within three nautical miles off the shore thereof, and the waters adjacent thereto, shall constitute the county of Kaua'i with its county seat at Līhu'e.

Section 1.03. County Elections.

A. In general. County elections shall be conducted in accordance with the election laws of the State insofar as applicable, but all elective officers shall be elected by nonpartisan elections. Except as otherwise provided in this charter, such nonpartisan elections shall be held in conjunction with the primary and general elections of the applicable year in which the terms of the mayor, council members, or prosecuting attorney, respectively, end.

B. First nonpartisan election. To the extent possible, the first nonpartisan election shall be held in conjunction with the primary election of the applicable year.

1. Offices of the Mayor, Prosecuting Attorney and Council members to be elected by districts, if any. In the case of the offices of mayor, prosecuting attorney, or any council members to be elected by districts, any candidate receiving a majority of the votes cast for that office shall be elected. However, if there is only one candidate for each of said offices, such candidate shall be elected.

2. Office of At-Large Council Members. The candidates receiving the highest number of votes shall be elected to fill each vacant at-large council office provided the candidate or candidates receive at least thirty percent of all votes cast for all at-large council offices. In the event of a tie for the last remaining at-large council office the candidates receiving the same number of votes shall be placed on the ballot for the second nonpartisan election.

C. Second nonpartisan election. To the extent possible, the second nonpartisan election shall be held in conjunction with the general election for the applicable year.

1. Offices of the Mayor, Prosecuting Attorney, and Council members to be elected by districts, if any. Unless a candidate for mayor, prosecuting attorney, or council members to be elected by district, if any, is elected in the first

nonpartisan election, the names of the two candidates receiving the highest number of votes for these offices in the first nonpartisan election shall be placed on the ballot for the second nonpartisan election. At the second nonpartisan election the candidates receiving the highest number of votes for mayor, prosecuting attorney and district council member, respectively, shall be elected.

2. Office of At-Large Council members.

a. If any at-large council office remains to be filled after the first nonpartisan election, two candidates for each vacant at-large council office shall be placed on the ballot. The names of the candidates receiving the highest number of votes cast in the first nonpartisan election, other than the name of any candidate elected after the first nonpartisan election, shall be placed on the ballot until a sufficient number of candidates are on the ballot as provided in this subsection. At the second nonpartisan election, the candidates receiving the highest number of votes for each vacant at-large office shall be elected.

b. In the event of a tie vote in the second nonpartisan election, the winner shall be determined by chance by a method chosen by the county clerk.

D. In any subsequent publication of the foregoing sections the term "first nonpartisan election" and "second nonpartisan election" may be changed to "primary election" and "general election", respectively." (Amended 1996)

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**ARTICLE III
COUNTY COUNCIL**

Section 3.01. Legislative Power. The legislative power of the county shall be vested in and exercised by the county council, except as otherwise provided by this charter.

Section 3.02. Composition. There shall be a council of seven members elected at-large.

Section 3.03. Terms. The terms of office of councilmembers shall be for two years beginning at twelve o'clock meridian on the first working day of December following their election. (Amended 1980, 1984)

Section 3.04. Qualifications.

A. To be eligible for the council, a person must be a citizen of the United States and must have been a duly qualified elector of the county for at least two years immediately preceding his election or appointment.

B. Any councilman who removes his residence from the county or is convicted of a felony shall immediately forfeit his office.

C. The council shall be the judge of the qualifications of its members and for that purpose shall have power to subpoena witnesses, take testimony and require the production of records. Decisions made by the council in the exercise of the powers granted in this subsection shall be subject to review by the Fifth Circuit Court of the State of Hawaii.

Section 3.05. Vacancy in Office. In the event a vacancy occurs in the council, the remaining members of the council shall appoint a successor with the required qualifications to fill the vacancy for the unexpired term. If the council is unable to fill a vacancy within (30) days after its occurrence, the mayor shall make the appointment to such vacancy. The foregoing provisions shall apply in the event a person elected as councilman dies before taking office; provided, however, that the vacancy shall be filled by the newly elected council within thirty (30) days after the beginning of the new term.

Section 3.06 Compensation. The salary of each councilmember shall be as established by the Salary Commission. (Amended 1988)

Section 3.07. Organization of Council; Officers; Rules; Employees.

A. The council shall meet in the council room at the county building or in the Kauai War Memorial Convention Hall for its organization promptly after its inauguration and swearing-in ceremony at which time it shall elect one of its members as chairman and presiding officer of the council. Until such time as the chairman is elected, the mayor shall preside at the council meetings, provided that the mayor shall not have a vote. The council shall also elect one of its members as vice-chairman who shall act as the presiding officer in the event of the chairman's absence. The council shall appoint a presiding officer pro tempore from its members in the event of the absence of both the chairman and vice-chairman. A majority of the entire membership of the council shall constitute a quorum and, except as otherwise provided, the affirmative vote of a majority of the entire membership shall be necessary to take any action. (Amended 1984)

B. The council shall adopt such rules as it may deem necessary for the organization of committees and the transaction of its business.

C. The council shall keep a journal of its proceedings.

D. The council may, upon an affirmative vote of at least two-thirds of its entire membership, suspend without pay for not more than one month any member for disorderly or contemptuous behavior in its presence. The presiding officer or the council by a majority vote may expel any other person who is guilty of disorderly, contemptuous or improper conduct at any meeting.

E. The council shall meet regularly at least twice in every month at such times as the council may prescribe by rule. Special meetings may be held on the call of the mayor, chairman or by five or more members. With the exception of deliberations

relating to confirmation of appointees, or consultations with the county attorney on claims, all council and council committee meetings shall be open to the public.

F. Council Staff. The council may appoint the necessary personnel for the transaction of its business, and such appointments shall be subject to the civil service and classification requirements. The chairman of the council shall be the administrative officer of the staff employees.

Section 3.08. Mayor May Appear Before Council. The mayor may propose in writing any motion, resolution or ordinance, or amendments thereto, but shall have no right to vote thereon.

Section 3.09. Eminent Domain. The council shall by resolution determine and declare the necessity of taking property for public purposes, describing the property and stating the uses to which it shall be devoted.

Section 3.10. Annual Budget and Capital Program. The council shall enact an annual budget ordinance, which shall include both the operational and capital expenditures for the fiscal year and the method of financing same. The council shall provide sufficient revenues to assure a balanced budget.

Section 3.11 Adoption of Pay Plan. The Council by ordinance shall fix the salaries of all department heads, officers (excluding councilmembers), and employees who are exempt from civil service. All other officers and employees shall be classified and paid in accordance with law. (Amended 1984, 1988)

Section 3.12. Audit.

A. Financial Audit. At least once every two years and at any other time as may be deemed necessary, the council shall cause an independent audit of all county funds and accounts to be made by a certified public accountant or firm of certified public accountants. The scope of the audit shall be in accordance with the terms of a written contract to be signed by the chairman which shall provide for the completion of the audit within a reasonable time. If the state makes such an audit, the council may accept it as satisfying the requirements of this section. The audit shall be a matter of public record.

B. Performance Audit. To ensure and determine whether government services are being efficiently, effectively, and economically delivered, the council may at any time provide for a performance audit of any or all of the offices, agencies, departments, programs, and operations for which the county is responsible. The council may exercise its authority to conduct performance audits through the hiring of a qualified in-house auditor or through the hiring of a qualified auditor or both. The scope of the audit shall be in accordance with the terms of an assignment referred to the office of the county clerk by the county council or a written contract to be approved by the council and signed by the presiding officer of the council, but may include the following activities:

- (1) Examination and testing of county offices', agencies' programs' and

departments' implementation processes to determine whether the laws, policies and programs of the county are being carried out in the most effective, efficient and economical manner.

(2) Examination and testing of the internal control systems of offices, agencies, programs, operations and departments to ensure that such systems are properly designed to safeguard public assets against loss from waste, fraud, error, to promote efficient operations, and to encourage adherence to prescribed management policies.

Said assignment or contract shall encourage recommendations for changes in the organization, management and processes which will produce greater efficiency and effectiveness in meeting the objectives of the programs or operations carried out by the respective county agencies, departments, offices, programs, and operations, and shall provide for the completion of the audit within one calendar year. A copy of the audit report shall be filed with the county clerk and shall be public record.

Section 3.13. Creation of a General Debt.

A. The council by the affirmative vote of at least five members may authorize the issuance of general obligation bonds in accordance with the Constitution and laws of the State of Hawaii.

B. Each bond authorization shall specify the purpose for which moneys are to be borrowed and the maximum amount of bonds to be issued for that purpose.

C. Notwithstanding any limitation contained in this charter. the council may accept and receive participating or nonparticipating federal and state loans for public improvement projects or other purposes, the aggregate of which. together with any bonded indebtedness outstanding, shall not at any time exceed the total bonded indebtedness authorized by the Constitution of the State of Hawaii.

D. The council may provide for the refunding of general obligation bonds.

Section 3.14. Creation of Special Assessment Debt. The council may authorize the issuance of improvement bonds to finance assessable public improvements in the manner provided by law.

Section 3.15. Revenue Bond Indebtedness. The council may authorize the issuance of revenue bonds for the purpose of initiating, constructing, acquiring, extending, replacing or otherwise improving any revenue-producing facility as provided by law.

Section 3.16. Temporary Borrowing.

A. The council may borrow money in any fiscal year in anticipation

of revenues to be derived from taxes for that year, and for any of the purposes to which the revenues are appropriated. No such borrowing shall be in excess of twenty-five per cent (25%) of the amount of the uncollected taxes of that year.

B. When any warrants are presented to the county for payment and the same are not paid for lack of funds, the director of finance shall issue a warrant note, equal in amount to the face value of the warrant or warrants so presented for payment. The warrant note shall be in a form and shall be due at a date prescribed by the director of finance. It shall bear interest at the lowest obtainable rate. The notes shall be a first charge on the moneys of any fund against which the warrants are issued.

C. The council upon recommendation of the mayor may authorize the director of finance to obtain temporary loans from the State.

Section 3.17. Investigation. The council or any authorized committee thereof shall have the power to conduct investigations of the operation of any agency or function of the county and any subject upon which the council may legislate. In investigations, the presiding officer shall have the right to administer oaths and in the name of the council to subpoena witnesses and compel the production of books and papers pertinent thereto. If any person subpoenaed as a witness, or to produce any books or papers called for by the process of the council or committee shall fail or refuse to respond thereto, the circuit court upon request of the council shall have power to compel obedience to any process of the council and require such witness to answer questions put to him as aforesaid, and to punish as a contempt of the court, any refusal to comply therewith without good cause shown therefor.

False swearing by any witness shall constitute perjury and be punished as such, and whenever the council is satisfied that a witness has sworn falsely in any hearing or investigation, it shall report same to the county attorney for prosecution. In any investigation which concerns the alleged gross misconduct or alleged criminal action on the part of any individual, such individual shall have the right to be represented by counsel, the right of reasonable cross-examination of witnesses and the right to process of the council to compel the attendance of witnesses in his behalf.

Section 3.18. Restrictions on County Council and Council members. The council and its members shall not interfere with the administrative processes delegated to the mayor.

Except for the purpose of investigative inquiries under Section 3.17, the council or its members, in dealing with county employees, or with county officers who are subjected to the direction and supervision of the mayor, shall deal solely through the mayor. and neither the council nor its members shall give orders to any such employee or officer either publicly or privately. Any willful violation of the provisions of this section by a member of the council shall be sufficient grounds for an action for his removal from office.

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ARTICLE IV ORDINANCES AND RESOLUTIONS

Section 4.01. Actions of the Council. Every legislative act of the council shall be by ordinance except as otherwise provided. Non-legislative acts of the council may be by resolution. Transfer of funds within the same department, whether in the operating budget or capital budget, may be effected by resolution. The enacting clause of every ordinance shall be "Be it ordained by the council of the county of Kaua'i:" and the enacting clause of every resolution shall be "Be it resolved by the council of the county of Kauai:"

Section 4.02. Introduction, Consideration and Passage of Ordinances and Resolutions.

A. Every proposed ordinance shall be initiated as a bill and shall be passed only after two readings on separate days. The vote on final passage shall be taken by ayes and noes and entered in the journal. Full readings of bill may be waived by vote or a majority of the council.

B. Every ordinance shall embrace but one subject, which shall be expressed in its title.

C. No bill shall be so amended as to change its original purpose. Every bill, as amended, shall be in writing before final passage.

D. When a bill fails to pass on final reading and a motion is made to reconsider, the vote on such motion shall not be acted upon before the expiration of twenty-four (24) hours.

E. Except as otherwise provided in this charter, resolutions may be adopted on one reading. The reading shall be in full except by a majority consent of all councilmen present, in which case the reading may be by title only.

F. Bills embracing (1) the fixing of special assessments for the cost or improvements, (2) the appropriation of public funds or the authorization of the issuance of general obligation bonds or (3) the imposition of a duty or penalty on any person, shall pass first reading by ayes and noes, and digests of such bills shall be advertised once in a newspaper of general circulation in the county, at least seven days before final reading by the council. Copies of such bills shall be filed for use and examination by the public in the office of the county clerk at least seven days prior to the final reading thereof.

G. Upon the request of a majority of the council, a public hearing shall be held on any proposed ordinance or resolution. Notice of the public hearing shall be by publication in a newspaper of general circulation in the county, and the public hearing shall be held not earlier than seven days prior to the final reading on the proposed ordinance or resolution.

H. All ordinances shall be promptly advertised once by title in a newspaper of

general circulation in the county with the ayes and noes after enactment. Unless otherwise provided, resolutions need not be advertised either before or after adoption.

I. Resolution authorizing proceedings in eminent domain shall not be acted upon on the date of introduction, but shall be laid over for at least fourteen (14) days before adoption. Such resolutions shall be advertised once in a newspaper of general circulation in the county at least fourteen (14) days before adoption by the council. Copies of such resolutions shall be filed for use and examination by the public in the office of the county clerk at least fourteen (14) days prior to the adoption thereof. Upon adoption, every such resolution shall be presented to the mayor, and he may approve or disapprove it pursuant to applicable provisions governing the approval or disapproval of bills.

J. The council may adopt resolutions for the purpose of marking roads or regulating and adjusting the movement of traffic and pedestrians in connection with traffic ordinances, and such resolutions need not be published; provided, that no person shall be punished for violating such resolutions so adopted unless the regulation, mark or adjustment sought to be effected is clearly indicated in the places where effective by legible markers or signs.

K. Emergency Ordinances. To meet a public emergency affecting life, health or property, the county council may adopt one or more emergency ordinances, but such ordinances may not be used to levy taxes, regulate the rate charged by any public utility for its services, or authorize the borrowing of money.

1. Every emergency ordinance shall be plainly designated as such and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing the claimed emergency in clear and specific terms. Except as thus indicated, it shall be introduced in the form and manner prescribed for ordinances generally. An emergency ordinance may be considered and may be adopted with or without amendment or rejected at the meeting at which it is introduced. The affirmative vote of all council members present, or the affirmative vote of three-fourths of those elected, shall be required for adoption of such an ordinance. After adoption of an emergency ordinance, the council shall cause it to be printed and published as prescribed for other adopted ordinances.

2. Every emergency ordinance, including any amendments made thereto after its adoption, shall automatically stand repealed as of the sixty-first (61st) day following the date on which it was adopted.

Section 4.03. Submission of Ordinances to the Mayor.

A. Every bill which has passed the council and has been duly authenticated by the county clerk and the presiding officer, shall be presented to the mayor for his approval. If he approves it, he shall sign it and it shall then become an ordinance. If he disapproves it, he shall specify his objections thereto in writing and return the bill to the county clerk with his objections within ten days, excluding Saturdays, Sundays and

holidays after receiving it. If he does not return it with his disapproval within that time, it shall take effect as if he had signed it. The objections of the mayor shall be entered in the journal of the council and the council may, after five and within thirty (30) days after the bill has been so returned, reconsider the vote upon the bill. If the bill, upon reconsideration, is again passed by the affirmative vote of five members of the council, the presiding officer shall verify that fact on the bill and when so certified, the bill shall then become an ordinance with like effect as if it had been signed by the mayor. If the bill fails to receive the vote of at least five members of the council. it shall be deemed void.

B. If any bill is presented to the mayor appropriating money, he may veto any item or items or appropriations therefore by striking out or reducing the same. In case of such a veto, the mayor shall append to the bill at the time of signing it a statement of the item or items or portion or portions thereof to which he objects and the reasons therefore. Each item so vetoed may be reconsidered by the council in the same manner as bills which have been disapproved by the mayor.

Section 4.04. Amendment, Revision or Repeal: Adoption of Codes by Reference.

A. No ordinance shall be amended, revised or repealed by the council except by ordinance. No resolution shall be amended, revised or repealed except by resolution, but a resolution may be superseded by a subsequent ordinance.

B. Any ordinance or resolution may be repealed by reference to its number or section number. Revisions or amendments may be made in the same manner but the same, or the section, subsection or paragraph thereof, revised or amended, shall be re-enacted at length as revised or amended; but when the amendment consists of adding new sections, subsections, paragraphs, or substituting a word, term or number, it shall be sufficient to enact the new matter alone if reference thereto is made in the title.

C. Any code or portions thereof may be adopted by reference thereto by the enactment of an ordinance for that purpose. The code, or portions, need not be published in the manner required for ordinances, but not less than three copies thereof shall be filed for use and examination by the public in the office of the county clerk not less than fifteen (15) days prior to the final reading thereof. and notice of the availability of said copies shall be published by the clerk.

Section 4.05. Codification of Ordinances. Within two years of the effective date of this charter, the council shall cause a code to be prepared and published, containing all of the ordinances of the county which are appropriate for continuation as law. Such a code shall be prepared and published at intervals of every ten years thereafter. The code may be prepared by the county attorney, or the council may contract for its preparation by professional persons or organizations experienced in the revision and codification of ordinances or statutes.

A. The code may be adopted by reference by the passage of an ordinance for that purpose. Copies of the code shall be made available to the public at a reasonable price prior to and after its adoption.

B. All proposed ordinances of general application introduced after the approval of the code shall be adopted as amendments of or additions to the code and by reference thereto.

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ARTICLE V COUNTY CLERK

Section 5.01. Powers, Duties and Functions.

A. The council shall appoint and may remove and shall fix the salary of the county clerk.

B. The county clerk shall:

1. Be the clerk of the council.

2. Take charge of safety keep and dispose of all books, papers and records which may properly be filed in his office and keep in separate files all ordinances, resolutions and regulations and cumulative indices of the same, or exact copies thereof, enacted or adopted by the council.

3. Have custody of the county seal, which shall be used to authenticate all official papers and instruments requiring execution or certification by the county clerk in the exercise of his office.

4. Conduct all elections held within the county pursuant to this charter, the laws of the State of Hawaii or the United States of America.

5. Perform other functions as required by this charter, by law or assigned by the council.

C. The county clerk may appoint the necessary staff for which appropriations have been made by the council with the same powers with respect to the personnel of his office as the department heads in the executive branch.

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ARTICLE VII MAYOR

Section 7.01. Election and Term of Office. The electors of the county shall elect a mayor whose term of office shall be four years beginning at twelve o'clock meridian on the first working day of December following his election. No person shall serve as mayor for more than two consecutive full terms.

The Four year term for mayor shall apply commencing with the 1990 General Election. (Amended 1980, 1984, 1988)

Section 7.02. Qualifications. Any citizen of the United States not less than thirty (30) years of age who has been a duly qualified resident elector of the county for at least three years immediately prior to his election shall be eligible for election to the office of mayor. Upon removal of his residence from the county, the mayor shall by that fact be deemed to have vacated his office. (Amended 1980)

Section 7.03. Compensation. The salary of the mayor shall be \$19,000.00 per annum which shall be subject to change by the council. The salary of any incumbent shall be reduced only in the event that a general reduction in salaries of all county officers and employees is simultaneously effected.

Section 7.04. Contingency Fund. The council shall provide in the annual budget a contingent fund of not less than \$2,500.00 to be expended by the mayor for such public purposes as he may deem proper.

Section 7.05. Powers, Duties and Functions. The mayor shall be the chief executive officer of the county. He shall have the power to:

A. Except as otherwise provided, exercise direct supervision over all departments and coordinate all administrative activities and see that they are honestly, efficiently and lawfully conducted.

B. Appoint the necessary members of his staff and other employees and officers whose appointments are not provided herein.

C. Create positions authorized by the council and for which appropriations have been made, or abolish positions, but a monthly report of such actions shall be made to the council.

D. Make temporary transfers of positions between departments or between subdivisions of departments.

E. Recommend to the council for its approval a pay plan for all department heads, officers and employees who are exempt from civil service and the position classification plan.

F. Submit operating and capital budgets, together with a capital program annually to the council for its consideration and adoption.

G. Sign instruments requiring execution by the county, including deeds and other conveyances, except those which the director of finance or other officer is authorized by this charter, ordinance or resolution to sign.

H. Present messages or information to the council which in his opinion are necessary or expedient.

I. In addition to the annual report, make periodic reports informing the public as to county policies, programs and operations.

J. Approve or veto ordinances and resolutions pertaining to eminent domain proceedings.

K. Have a voice but no vote in the proceedings of all boards and commissions.

L. Enforce the provisions of this charter, the ordinances of the county and all applicable laws.

M. Exercise such other powers and perform such other duties as may be prescribed by this charter or by ordinance.

Section 7.06. Vacancy in Office.

A. In the event of a vacancy in the office of the mayor, the council shall select, by majority vote, one of its members as mayor to serve until the next general election and assumption of office in December by the person elected mayor. The vacancy in the council shall be filled as provided for in Article III, Section 3.05 of the charter. In the event the vacancy occurs prior to the mid-term election, the person elected mayor in the general election shall serve only for the unexpired term of the mayor elected in the prior election. In the event the vacancy occurs later than three (3) days prior to the closing date for filing of nomination papers for the mid-term election, the mayor selected by the council shall continue to serve for the remainder of the term of the person he succeeded. The foregoing provisions shall also apply in the event the person elected as mayor dies before taking office. (Amended 1980)

B. During the temporary absence from the county or temporary disability of the mayor, or in case of a vacancy in the office of the mayor, until a new mayor is appointed or elected, the administrative assistant shall act as mayor. In the event both the mayor and the administrative assistant are temporarily absent or disabled, the finance director shall act as mayor during said period.

(1) The mayor shall appoint and may remove an administrative assistant whose qualification shall be the same for the position of mayor. The salary for the administrative assistant shall be fixed by ordinance. The administrative assistant shall serve as the mayor's principal administrative aide.

C. In the event the person elected as mayor dies before taking office, the person serving as administrative assistant at the termination of the prior term shall continue to serve as acting mayor until a new mayor is elected.

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ARTICLE IXA
PROSECUTING ATTORNEY

Section 9A.01. Election and Term of Office. The electors of the county shall elect a prosecuting attorney, whose term of office shall be four years beginning at twelve o'clock meridian on the first working day of December following his election. (Amended 1972, 1980, 1984)

Section 9A.02. Qualifications. The prosecuting attorney shall be an attorney licensed to practice and in good standing before the Supreme Court of the State of Hawaii and shall have engaged in the practice of law in the State for at least three years. He shall also have been a duly qualified elector of the county for at least one year immediately preceding his election. (Amended 1972)

Section 9A.03. Powers, Duties and Functions. The prosecuting attorney shall:

A. Attend all courts in the county and conduct on behalf of the people all prosecutions therein for offenses against the laws of the State and the ordinances and regulations of the county.

B. Prosecute offenses against the laws of the State under the authority of the Attorney General of the State.

C. Appear in every criminal case where there is a change of venue from the courts in the county and prosecute the same in any jurisdiction to which the same is changed or removed. The expense of such proceeding shall be paid by the county.

D. Institute proceedings, or direct the chief of police to do so, before the district judge for the arrest of persons charged with or reasonably suspected of public offenses, when he has information that any such offenses have been committed, and for that purpose take charge of criminal cases before the district judge, either in person or by a deputy or by such other prosecuting officer as he shall designate.

E. Draw all indictments and attend before and give advice to the grand jury whenever cases are presented to it for its consideration. Nothing herein contained shall prevent the conduct of proceedings by private counsel before all courts of the State under the direction on the prosecuting attorney. (Amended 1972)

Section 9A.04. Staff. The prosecuting attorney may appoint deputies, investigators, and other necessary staff. The deputy who is designated as first deputy shall, during the temporary absence or disability of the prosecuting attorney, assume the power and perform the duties of the prosecuting attorney. (Amended 1972)

Section 9A.05. Vacancy in Office. A vacancy in the office of prosecuting attorney shall be filled in the following manner:

A. if the unexpired term is less than a year, the first deputy shall act as prosecuting attorney. If the position of first deputy is vacant or if the first deputy is

unable to so act, the mayor with the approval of the council shall fill the vacancy by appointment of a person with requisite qualifications within thirty days after the occurrence of the vacancy.

B. If the unexpired term is for eighteen (18) months or more, or in the event the person elected as prosecutor dies before taking office, or is unable to qualify, then the vacancy shall be filled by a special primary election and a special general election, patterned after the primary and general election laws of the State, insofar as applicable. The special primary election shall be called by the council and held within forty-five (45) days after the occurrence of the vacancy. The special general election shall be held thirty (30) days after the special primary election. Pending a special election, the first deputy shall act as prosecuting attorney. (Amended 1972)

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ARTICLE XXII

INITIATIVE AND REFERENDUM

Section 22.01. Power of Initiative and Referendum.

A. The power of voter to propose ordinances (except as provided in Section 22.02) shall be the initiative power.

B. The power of the voters to approve or reject ordinances that have been passed by the county council (except as provided in Section 22.02) shall be the referendum power. (Amended 1976)

Section 22.02. Limitations to Powers. The initiative power and the referendum power shall not extend to any part or all of the operating budget or capital budget; any financial matter relating to public works; any ordinance authorizing or repealing the levy of taxes; any emergency legislation; any ordinance making or repealing any appropriation of money or fixing the salaries of county employees or officers; any ordinance authorizing the appointment of employees; any ordinance authorizing the issuance of bonds; or any matter covered under collective bargaining contracts. (Amended 1976)

Section 22.03. Submission Requirement.

A. Voters seeking to propose an ordinance by initiative shall submit an initiative petition addressed to the council and containing the full text of the proposed ordinance. The initiative petition shall be filed with the clerk of the council at least ninety-six (96) hours prior to any regular council committee meeting.

B. Voters seeking referendum of an ordinance shall submit a referendum petition addressed to the council, identifying the particular ordinance and requesting that it be either repealed or referred to the voters of the county.

C. Each initiative or each referendum petition must be signed by not less than twenty percent (20%) of the number of eligible voters in the last preceding general

election.

D. If an initiative or referendum measure is to be placed on the ballot in a general election, the initiative and referendum petitions must be submitted not less than one hundred twenty (120) calendar days prior to the day scheduled for the general election in the county. (Amended 1976)

Section 22.04. Committee. For each initiative or each referendum petition there shall be a petitioner's committee representing all the petitioners, which committee shall be composed of five (5) members who shall be qualified voters of the county and signers of the petition. The committee shall be responsible for circulation of the petition and for assembling and filing the petition in proper form. The committee shall have the power to amend or withdraw the petition as provided by this article. (Amended 1976)

Section 22.05. Initiative and Referendum Petition: Form and Sufficiency.

A. For immediate acceptance of the petition, the clerk of the council shall require reasonable compliance with the following:

1. The petitions indicate by name and address, the five (5) signers who constitute the petitioner's committee for that petition.
2. The petitions indicate the address which all notices for petitioner's committee are to be sent.
3. The signatures to petitions be filed on papers of uniform size and style and assembled as one instrument.
4. Each signature on the petition shall be followed by the name (printed) and the place of residence of the person signing.
5. The petition be signed by the required number of qualified registered voters of the county.

B. Signatures are invalid and petitions insufficient:

1. If signers are not given an opportunity to read the full text of the ordinance sought to be reconsidered and if the full text of the ordinance is not contained in or attached to each signature paper or set of signature papers of an initiative or referendum petition throughout circulation.
2. If affidavits (executed by the circulators for each set of signature papers) are not attached to the papers at the time of filing of petitions with the clerk of the council. Each affidavit shall attest to the effect that: a particular individual personally circulated an identifiable set of papers; each paper bears a stated number of signatures; each signature on a paper was affixed in the circulator's presence; each signature is the genuine signature or the person it purports to be.

C. Individual signatures may be withdrawn within fifteen (15) days after the filing of an initiative or referendum petition with the clerk of the council by the filing of a written request thereof, by the individual, with the clerk or the council. (Amended 1976)

Section 22.06. Procedure After Filing.

A. Certificate of Clerk; Amendment. Within twenty (20) days after the filing of an initiative or referendum petition, the clerk of the council shall complete a certificate as to the sufficiency of the petition. As soon as a certificate is completed, the clerk shall notify the petitioner's committee of the contents of the certificate. If a petition is certified sufficient, the clerk shall present his certificate to the county council at its next meeting. If the clerk certifies a petition insufficient, his certificate shall show the particulars wherein the petition is defective. A majority of the petitioner's committee may elect to amend a petition certified insufficient and must so notify the clerk, but if a majority does not elect to amend a petition, the clerk shall present his certificate to the county council at its next meeting.

B. Supplementary Petition. If a majority of the petitioner's committee elects to amend its petition, then within ten (10) days after receipt of the clerk's certificate, the committee shall file a supplementary petition upon additional papers. The supplementary petition shall be governed by the same requirements as for an original petition. Within five (5) days after the filing of a supplementary petition, the clerk shall complete a second certificate as to the sufficiency of the original petition as amended by the supplementary petition. Thereafter, the procedural requirements for the petition as amended shall be the same as that for the original petition as provided in subsection A, this section.

C. Council Review. A majority of the petitioner's committee may request the county council to review a clerk's certificate, at or before the meeting at which the clerk presents the certificate to the council. The council shall review the latest clerk's certificate, upon the committee's request, and shall approve or reject the certificate or may substitute its own determination of sufficiency of the petition by resolution.

D. Court Review; New Petition. A final determination as to the sufficiency of a petition shall be subject to court review. A final determination of insufficiency, even if sustained upon court review, shall not prejudice the filing of a new petition for the same purpose. (Amended 1976)

Section 22.07. County Council Action on Petitions.

A. The county council shall proceed immediately to consider an initiative or referendum petition which has been determined sufficient in accordance with the provisions of this article. If an initiative petition is concerned, the ordinance it proposes shall at once be introduced subject to the procedures required for ordinances under Article IV of this charter; however, not more than sixty (60) days shall elapse between the time of first reading of the initiative proposal as a bill and completion of action to adopt, amend, or reject the same. If a referendum petition is concerned, the ordinance

to which that petition is directed shall be reconsidered by the council; and not later than thirty (30) days after the date on which the petition was determined sufficient, the council shall, by ordinance, repeal, or, by resolution, sustain the ordinance.

B. If the council rejects an initiative amendment proposal or passes it with an amendment unacceptable to a majority of the petitioner's committee, or if the council fails to repeal an ordinance reconsidered pursuant to a referendum petition, it shall submit the originally proposed initiative ordinance or refer the reconsidered ordinance concerned to the voters of the county at the next general election.

C. The council may, in its discretion, and under appropriate circumstances, provide for a special election.

D. The ballot for such measures shall contain an objective summary of the substance of the measure and shall have below the ballot title designated spaces in which to mark a ballot FOR or AGAINST the measure. Copies of initiative or referendum ordinances shall also be made available at the polls.

E. Suspension of Ordinance. When a referendum petition or amended petition has been certified as sufficient by the County Clerk, the Ordinance sought to be repeated in the petition shall not be effective and shall be deemed suspended from the date the petition is certified as sufficient until the voters have voted on the measure and the election results have been certified as provided in this Article. (Amended 1976, 1980)

Section 22.08. Withdrawal of Petitions. An initiative or referendum petition may be withdrawn at any time prior to the sixtieth (60th) day immediately preceding the day scheduled for a vote in the county by filing with the county clerk a request for withdrawal signed by at least four (4) members of the petitioners committee. Upon the filing or the request, the petition shall have no further force or effect and all proceedings thereon shall be terminated. (Amended 1976)

Section 22.09. Results of Election. If a majority of the voters voting upon a proposed initiative ordinance shall vote in favor of it, the ordinance involved shall be considered adopted upon certification of the election results. If a majority of the voters voting upon a referendum ordinance shall vote against it, the ordinance involved shall be considered repealed upon certification of the election results. (Amended 1976)

Section 22.10. Upon approval by a majority of the votes cast on the proposal, the charter amendment shall take effect upon all legislative acts not excluded herein enacted after January 2, 1977. (Amended 1976)

Section 22.11. A referendum that nullifies an existing ordinance shall not affect any vested right or any action taken or expenditures made up to the date of the referendum. (Amended 1976)

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ARTICLE XXIII GENERAL PROVISIONS

Section 23.11. County Elections. County elections shall be conducted in accordance with the election laws of the State insofar as applicable, but the county primary and general elections shall be held in every two years following the initial election.

Section 23.12. Oaths of Office. Before entering upon the duties of his office, each officer elected or appointed shall take and subscribe to such oath or affirmation as shall be provided by law.

Section 23.13. Impeachment of Officers. Any officer appointed or elected may be impeached for malfeasance, misfeasance or nonfeasance in office. Such impeachment proceeding shall be commenced in the Fifth Circuit Court, State of Hawai'i. The charge or charges shall be set forth in writing in a verified petition for impeachment signed by not less than five percent (5%) of the voters registered in the last general election, except as to charges filed by the ethics commission. If the court sustains the charge or charges, such officer shall be deemed removed from office. The petitioners seeking the impeachment shall bear their own attorneys' fees and other costs of such proceedings, except proceedings initiated by the ethics commission, the cost of which shall be paid by the county.

A. Whenever any officer is sought to be impeached for matters relating to the officer's official powers or duties, and the impeachment is not being sought by the ethics commission, such officer may request legal representation by the county or at county expense.

1. Such request for legal representation shall be accompanied by a signed statement in a form approved by the County Attorney, in which the officer agrees to reimburse the County for all expenses incurred in such legal representation, if the officer is impeached.

2. Determination of expenses shall be made by the County Attorney and approved by the Council, and shall be conclusive.

3. Any officer being impeached for matters not relating to their official powers or duties shall bear their own attorney's fees and costs of such proceedings.

B. Legal representation for impeachment relating to an officer's official powers or duties, and which is not being sought by the ethics commission, shall be as follows:

1. By the County Attorney's office if requested by the officer and agreed to by the County Attorney.

2. By outside legal counsel selected by the officer. The Mayor and Council shall appropriate reasonable amounts for such legal services. In the

alternative, existing funds which have been appropriated for legal services may be used, provided the Council approves of the amount.

C. Nothing in this section shall preclude the officer sought to be impeached from recovering attorneys fees as provided by law. If legal representation is provided at county expense, such recovery shall be reimbursed to the county. (Amended 1992)

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ARTICLE XXIV CHARTER AMENDMENT

Section 24.01. Initiation of Amendments. Amendments to this charter may be initiated only in the following manner:

A. By resolution of the council adopted after two readings on separate days and passed by a vote of five or more members of the council.

B. By petition presented to the council, signed by not less than five percent (5%) of the voters registered in the last general election, setting forth the proposed amendments. Such petitions shall designate and authorize not less than three nor more than five of the signers thereto to approve any alteration or change in the form or language or any restatement of the text of the proposed amendments which may be made by the county attorney. Upon filing of such petition with the council, the county clerk shall examine it to see whether it contains a sufficient number of apparently genuine signatures of voters.

Section 24.02. Elections to be Called.

A. Any resolution of the council or petition of the voters proposing amendments to the charter shall provide that the proposed amendments shall be submitted to the voters of the county at the next general election.

B. The county clerk shall have the proposed amendments published in a newspaper of general circulation in the county at least thirty (30) days prior to submission of the proposed amendments to the voters of the county at the next general election.

C. Should the majority of the voters voting thereon approve the proposed amendments to this charter, the amendments shall become effective at the time fixed in the amendment, or, if no time is fixed therein, thirty (30) days after its adoption by the voters of the county. Any charter amendment shall be published in a newspaper of general circulation in the county within thirty (30) days of the effective date of such amendment.

Section 24.03. Mandatory Review. Five years after the adoption of the charter and at ten year intervals thereafter, the mayor with the approval of the council shall appoint a charter commission composed of seven members to study and review the operation of

the county government under this charter. In the event the commission deems changes are necessary or desirable, the commission may propose amendments to the existing charter or draft a new charter which shall be submitted to the county clerk. The county clerk shall provide for the submission of such amendments or new charter to the voters at any general or special election as may be determined by the commission. The commission shall publish not less than thirty (30) days before any election at least once in a newspaper of general circulation within the county the entire text of the amendments or new charter.

A. Unless a new charter is submitted to the voters, each amendment to the charter shall be voted on separately.

B. If a majority of the voters voting upon a charter amendment votes in favor of it or a new charter, if a new charter is proposed, the amendment or new charter shall become effective at the time fixed in the amendment or charter, or if no time is fixed, thirty (30) days after its adoption by the voters. Any charter or amendment shall be published in its entirety not more than thirty (30) days after its adoption.

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ARTICLE XXVII RECALL

Section 27.01. Recall Procedure. Any elective officer serving a four-year term as provided for in this charter may be removed from office by the voters of the county. The procedure to effect such removal shall be in accordance with this article.

A petition demanding that the question of removing such official be submitted to the voters shall be filed with the county clerk. Such petitions shall be signed by currently registered voters numbering not less than twenty percent (20%) of the voters registered in the last general election. (Amended 1984)

Section 27.02. Petitions. Petition papers shall be procured only from the county clerk, who shall keep a sufficient number of such blank petition papers on file for distribution as herein provided. Prior to the issuance of such petition papers, an affidavit shall be made by one or more voters and filed with the clerk, stating the name and office of the officer sought to be removed. (Amended 1984)

Section 27.03. Signatures. Each signer of a recall petition shall print and sign their name and shall place thereon after the name, social security number, place of residence and voting precinct. To each such petition paper there shall be attached an affidavit of the circulator thereof, stating the number of signers to such part of the petition and that each signature appended to the paper was made in the circulator's presence and is believed to be the genuine signature of the person whose name it purports to be, and that each signer understood it to be a recall petition of a specific elected officer. (Amended 1984)

Section 27.04. Filing and Certification. All papers comprising a recall petition shall be assembled and filed with the county clerk as one instrument within thirty (30) days after

the filing, with the clerk, of the affidavit stating the name and office of the officer sought to be removed. Within ten (10) days from the date of the filing of such petition, the clerk shall determine the sufficiency thereof and attach thereto a certificate showing the result of his examination. If the clerk shall certify that the petition is insufficient, he shall set forth in the certificate the particulars in which the petition is defective, and shall return a copy of the certificate to the person designated in such petition to receive it. (Amended 1984)

Section 27.05. Supplemental Petitions. In the event the initial petition contained insufficient signatures, such recall petition may be supported by supplemental signatures of voters signed in the manner required in Section 27.03 of this article appended to petitions issued, signed, and filed as required for the original petition at any time within ten (10) days after the date of the certificate of insufficiency by the clerk. The clerk shall within five (5) days after such supplemental petitions are filed make a like examination of them, and if his certificate shall show the same to be still insufficient, he shall return it in the manner described in Section 27.04 of this article to the person designated in such petition to receive the same, and no new petition for the recall of the officer sought to be removed shall be filed within one year thereafter. (Amended 1984)

Section 27.06. Recall Election. If a recall petition or supplemental petition shall be certified by the clerk to be sufficient, he shall promptly notify in writing the officer sought to be recalled of such action. If the official whose removal is sought does not resign within five (5) days after mailing of such notice, the clerk shall thereupon order and fix a day for holding a recall election. Any such election shall be held not less than seventy-five (75) nor more than ninety (90) days after the petition has been presented to the official, at the same time as any other special county or state election held within such period, but if no such election is to be held within such period, the clerk shall call a special recall election to be held within the time aforesaid. If less than fifty percent (50%) of the total number of voters registered in the last general election shall vote at such recall election, the officer sought to be recalled shall not be deemed recalled regardless of the outcome of the election. (Amended 1984)

Section 27.07. Ballots. The ballots at such recall election shall, with respect to each person whose removal is sought, submit the question: "Shall (name of person) be removed from the office of (name of office) by recall?" Immediately following each such question, there shall be printed on the ballots the two propositions in the order set forth: "For the recall of (name of person)." "Against the recall of (name of person)." Immediately to the right of the proposition there shall be designated spaces in which to mark the ballot FOR or AGAINST the recall. A majority vote shall be sufficient to recall such officer, subject to the provisions of Section 27.06 of this article. (Amended 1984)

Section 27.08. Succeeding Officer. The incumbent, if not recalled in such election, shall continue in office for the remainder of his unexpired term subject to the recall as before, except as provided in this charter. If recalled in the recall election, he shall be deemed removed from office upon the clerk's certification of the results of that election, and the office shall be filled as provided by this charter for the filling of vacancies of elected officials. The successor of any person so removed shall hold office during the unexpired term of his predecessor. (Amended 1984)

Section 27.09. Immunity to Recall. The question of the removal of any officer shall not be submitted to the voters until such person has served six (6) months of the term during which he is sought to be recalled, nor, in case of an officer retained in a recall election, until one year after that election. (Amended 1984)

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KAUA'I COUNTY CODE

ARTICLE 4. INITIATIVE AND REFERENDUM PETITION

Sec. 4-4.1 Initiative And Referendum Petition; Form And Sufficiency.

For immediate acceptance of the petition, the clerk of the council shall require reasonable compliance with the following:

(1) The petitions indicate by name and mailing address, the five (5) signers who constitute the petitioner's committee for that petition.

(2) The petitions indicate the mailing address which all notices for petitioner's committee are to be sent.

(3) The signatures to petitions be filed on paper of uniform size and style and assembled as one instrument.

(4) Each signer shall affix his own name on the petition in ink or indelible pencil.

(5) Each signer shall give the following information:

(A) Signature (first name, middle initial and last name) which shall be followed by the name printed.

(B) Social security number and place of residence.

(6) The petition shall be signed by the required number of registered voters of the county. Registered voter means a person who has been lawfully registered on or before the date on which the petition is verified by the clerk. (Ord. No. 364, April 19, 1979); Ord. No. 533, January 21, 1988)

Sec. 4-4.2 Verification Of Signatures.

No signature shall be deemed invalid where the clerk is able to identify the signature and signer's eligibility to sign such petition based upon the records available in the clerk's office. (Ord. No. 364, April 19, 1979)

Sec. 4-4.3 Sample Format Of Petition Heading.

The recommended petition heading format for Initiative and Referendum petitions shall be as follows:

Soc. Sec. No.	Signature	Print Name Last First M.I.	Legal Residence Address
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(Ord. No. 364, April 19, 1979; Ord. No. 533, January 21, 1988)

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